

### REMARKS

The specification is objected to for purported informalities. The Examiner states that the specification on page 6, lines 38-39 and on page 9, lines 9-11 indicate that the pressure is preferably 10-30 kg per cm<sup>2</sup> of skin, particularly preferably 2-9 kg per cm<sup>2</sup> of skin which is unclear because the particularly preferable range 2-9 kg per cm<sup>2</sup> is not within the preferable range of 10-30. The Examiner has requested appropriate correction. Applicant has obviated this objection by deleting reference to the particularly preferable range 2-9 kg per cm<sup>2</sup>.

In view of the amendments to the specification applicant requests that the Examiner reconsider and withdraw this objection of the specification.

The Examiner notes that the specification lacks headings and the claims do not begin with the phrase "I/We claim." Applicant has amended the specification to incorporate headings and have amended the claims section such that it begins with "I CLAIM."

In view of the amendments to the specification applicant respectfully requests that the Examiner reconsider and withdraw the objection to the specification.

Claims 18 and 23 stand rejected under 35 U.S.C. §112, second paragraph for purportedly being indefinite. In particular the Examiner contends that the phrase "regulated to produce resonance effects with restoring forces of the tissue" is indefinite because it purportedly has not been clearly defined what constitutes resonance effects with restoring forces making the metes and bounds of the claims vague. Applicant respectfully disagrees. The resonance effects recited in claim 18, instructs the user of the vibrating article to modify the vibration frequency of the latter until a resonance effect by vibrating tissue is noted.

The Examiner also contends that the recitation of the regional transdermal pressure as "sub-regional" is vague because it is not clear what exactly is meant by "sub-regional" or how it is different from regional transdermal pressure. Sub-regional in claim 23 is to denote an area of skin surface even smaller than what would be considered as "regional" as recited in claim 6. This means that "sub-regional" is a restriction as compared to "regional."

In view of the foregoing remarks, applicant requests that the Examiner reconsider and withdraw the rejection of claim 18 and 23 under 35 U.S.C. § 112, second paragraph.

Claims 6, 17, 18 and 23 stand rejected under 35 U.S.C. § 103(a) for purportedly being unpatentable over Werding (U.S. Patent No. 3,878,837). Applicant respectfully disagrees.

Werding relates to a non-medical apparatus which exerts pressures to the skin which are so low that it need not be admitted as a medical device. This is in accordance with the statement in column 1, line 18, wherein a maximum pressure of about 6 atm is applied. Such pressure does not cause any injuries in the subcutaneous fatty tissue. In contrast, the pressure applied according to the invention, i.e. from 10-30 kg/cm<sup>2</sup>, which is 10-30 atm, leads to ruptures in the subcutaneous tissue, thus applicant's apparatus deliberately cause injuries and, therefore, it must be approved as a medical device. These minute injuries to the subcutaneous fatty tissue produced by the claimed methods of this invention are similar to those produced by liposuction, but unlike liposuction it does not damage the epidermis. The Examiner contends that in this context that such injuries exceed the pain tolerance level and, thus, the invention is not enabled. Applicant respectfully disagrees. Depending on a patient's individual pain tolerance level one of skill in the art would readily appreciate that the invention is applied in combination with pain-alleviating measures, e.g., local anesthesia. Werding obviously wishes to remain below 6 atm because he describes the 6 atm value as a disadvantage in the art, which is characterized by the application of massage, a water or air jet. Therefore, it can be concluded from Werding that he would by no means consider pressures above 6 atm. One of skill in the art would therefore not be motivated by Werding to use pressures in excess of 6 atm and thus would not be motivated to develop the claimed methods. As such Werding does not render the claims obvious and in view of the foregoing remarks, applicant requests that the Examiner reconsider and withdraw the rejection of the claims.

Claim 24 stands rejected under 103(a) for purportedly being unpatentable over Werding in view of American Health (Yikes! Cellulite, Nov. 1996)("American Health"). Applicant respectfully disagrees.

Combining Werding with American Health does not teach or suggest the claimed invention. Werding teaches against applying a pressure greater than about 6 atm and as such teaches against the claimed method, which uses a pressure of 10-30 kg/cm<sup>2</sup> (10-30 atm). As discussed above the pressures applied according to the invention, i.e. from 10-30 kg/cm<sup>2</sup> (= 10-30 atm), leads to ruptures in the subcutaneous tissue as does liposuction. American Health actually teaches that liposuction cannot eliminate cellulite "Liposuction is intended to reduce the amount of fat, not change the waviness of it." (page 102, right col, sixth line from the bottom) and when performing the recommended massage, it is not possible to produce the pressures which are applied in accordance with this invention. As such one of skill in the art would not be motivated to develop the claimed method and would not expect such a method to successfully treat cellulite in view of Werding and American Health.

In view of the foregoing remarks, applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims.

Applicant believes no fee is associate with this response, however, applicant hereby authorize the Commission to deduct any missing or insufficient fees and credit any overpayment to Deposit Account 06-2375.

Dated: July 10, 2003

Respectfully submitted,

By Mary Anne Schofield  
Mary Anne Schofield  
Registration No.: 36,669

FULBRIGHT & JAWORSKI L.L.P.  
Market Square  
801 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2615  
(202) 662-0200  
(202) 662-4643 (Fax)  
Attorneys for Applicant